

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Susan Hubl on 3/12/2008.

Claim 8 is directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 4-7, directed to the process of making or using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement between groups I and II as set forth in the Office action mailed on 12/23/2005 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer

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applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The application has been amended IN THE CLAIMS as follows:

2. Claims 1-3, 11-12, 14, and 16-17 have been cancelled.
3. Claims 4-10, 13, and 15 have been rewritten as follows:

Claim 4. A method for detection of *Brucella melintensis* in a sample comprising:

- (i) providing a sample;
- (ii) performing a PCR assay to detect the set of polynucleotides of Claim 8 in the sample, wherein the detection of a first isolated polynucleotide and a second isolated polynucleotide indicates the presence of *Brucella melintensis* in the sample, wherein the first isolated polynucleotide consists of SEQ ID NO: 4 or the complement thereof and the second isolated polynucleotide consists of SEQ ID NO: 8 or the complement thereof.

Claim 5. The method of Claim 4 wherein said PCR assay comprises standard PCR.

Claim 6. The method of Claim 5, wherein said standard PCR comprises fluorogenic 5' nuclease PCR assay.

Claim 7. The method of claim 4, wherein said assay is performed using a first forward primer consisting of SEQ ID NO: 1, a first reverse primer consisting of SEQ ID NO:2, and a first hybridization probe consisting of SEQ ID NO:3 for detection of SEQ ID NO:4 and using a second forward primer consisting of SEQ ID NO:5, a second reverse primer consisting of SEQ ID NO:6, and a second hybridization probe consisting of SEQ ID NO:7 for detection of SEQ ID NO:8. and detecting the presence of SEQ ID NO:4 and SEQ ID NO:8 by flurogenic 5' nuclease PCR assay, wherein the presence of SEQ ID NO:4 and SEQ ID NO:8 indicates the presence of *Brucella melintensis* in the sample.

Claim 8. A set of polynucleotides comprising a first isolated polynucleotide and a second isolated polynucleotide, wherein the first isolated polynucleotide consists of SEQ ID NO: 4 or the complement thereof and the second isolated polynucleotide consists of SEQ ID NO: 8 or the complement thereof.

Claim 9. The set of polynucleotides of claim 8, further comprising at least one isolated polynucleotide consisting of the nucleic acid sequence selected from the group consisting of SEQ ID NOS: 12, 16, 20, and 24 or the complement thereof.

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Claim 10. The set of polynucleotides of claim 9, comprising six isolated polynucleotides each consisting of one of SEQ ID NOS: 4, 8, 12, 16, 20, and 24 or the complements thereof.

Claim 13. The set of polynucleotides of claim 8, further comprising at least one isolated polynucleotides consisting of the nucleic acid sequence selected from the group consisting of SEQ ID NOS: 1, 2, 3, 5, 6, and 7.

Claim 15. The set of polynucleotides of claim 9, further comprising at least one isolated polynucleotide consisting of the nucleic acid sequence selected from the group consisting of SEQ ID NOS: 1, 2, 3, 5, 6, 7, 9, 10, 11, 13, 14, 15, 17, 18, 19, 21, 22, and 23.

**The following is an examiner's statement of reasons for allowance:**

4. Claims 4-10, 13, and 15 are free of the prior art of record because the prior art of record does not teach nor suggest the nucleic acid sequences disclosed in the SEQ ID NOs recited. Claims 4-10, 13, and 15 are allowable.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine Salmon whose telephone number is (571) 272-3316. The examiner can normally be reached on Monday-Friday 8AM-430PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Katherine Salmon/  
Examiner, Art Unit 1634

/Ram R. Shukla/  
Supervisory Patent Examiner, Art Unit 1634